

OGC HAS REVIEWED.

STATINTL

30 September 1948

[redacted]
Office of the General Counsel

STATINTL

Contract [redacted]

1. Subject contract has been reviewed by this office, and it is returned herewith for suggested modification. As the contract is now written, there appears to be a lack of mutuality which would very probably make it unenforceable.

2. Paragraph 2, Quantity of the General Stipulations provides that it is "agreed that the Government guarantees the Contractor neither a minimum nor maximum amount of work". The purpose of this provision is clear, but, on the other hand, there is no obligation on the part of the Government to give any business at all to this Contractor. It is assumed that both parties to the contract intended that the Contractor should have an exclusive right to provide all repairs and services, if any, required on the cars indicated. Unless we obligate ourselves to give the Contractor such an exclusive right to do whatever work we may require, there does not seem to be any binding duty on the Contractor to observe his future commitments under the agreement. It is suggested that paragraph 2, Quantity of the General Stipulations be changed to read as follows:

"2. Quantity. The Government hereby agrees that it will not deliver for repairs and service incidental to normal maintenance the cars indicated herein to any other than the Contractor, and the Contractor will be given the opportunity to bid for emergency repairs and service where feasible, but the Government guarantees the Contractor neither a minimum nor maximum amount of work."

3. The suggested change should be submitted to the Contractor as a modification under paragraph 5. of the General Contract Conditions and should be signed by both the Contractor and the Government.

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General Counsel: [redacted]